



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 28, 2004

Mr. Robert R. Ray
Assistant City Attorney
City of Longview
P.O. Box 1952
Longview, Texas 75606-1952

OR2004-10842

Dear Mr. Ray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 215663.

The City of Longview (the "city") received a request for all e-mails transmitted from January 1, 2004 through September 29, 2004 by six named city employees. You state that you have released some responsive information to the requestor. You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.109, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You contend that the e-mail addresses you have marked are confidential under section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. Also, section 552.137 does not apply to a business's general e-mail address. While you state that three of the individuals at issue have consented to the release of their personal e-mail addresses, you do not inform us that the remaining individuals have affirmatively consented to the release of their e-mail addresses contained in the submitted materials. You must, therefore, withhold most of the e-mail addresses that you have marked under section 552.137 of the Government

Code. We have marked the e-mail addresses of the government employees and businesses that the city must release.

You also contend that a portion of the submitted information is excepted from disclosure under section 552.109 of the Government Code. Section 552.109 protects private correspondence and communications of elected office-holders when release of the information "would constitute an invasion of privacy." *See* Gov't Code § 552.109. Section 552.109 protects the privacy interests of elected officials only. Open Records Decision No. 473 at 3 (1987). It does not protect the privacy interests of their correspondents. Open Records Decision No. 332 at 2 (1982). The information at issue does not relate to the city official. Thus, section 552.109 is not applicable.

The city asserts this portion is also excepted under common law privacy. Section 552.101 encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The common law right to privacy is purely personal. *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 (1981). The information the city marked as private does not identify a named person. Thus, the interest of the person to whom this information relates is sufficiently protected. Accordingly, the city may not withhold this information.

In summary, we conclude that you must withhold most of the e-mail addresses you have marked under section 552.137 of the Government Code. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 215663

Enc. Submitted documents

c: Pastor H.C. Rockmore
P.O. Box 12313
Longview, Texas 75607
(w/o enclosures)